

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

MORGAN O'HARE, INC.¹

Employer

and

PRODUCTION AND MAINTENANCE UNION LOCAL 101

Petitioner

Case 13-RC-20478

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All heat treatment operators, machine operators, forklift operators, sanitation employees and laborers, shipping and receiving employees, and working foremen employed by the Employer at its facility currently located at 701-735 Factory Road, Addison, Illinois; but excluding foremen, clerical employees, professional employees, supervisors, guards, truck drivers, salesmen and all others excluded by the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

shall vote whether or not they desire to be represented for collective bargaining purposes by Production and Maintenance Union Local 101

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before December 7, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **December 14, 2000**.

DATED November 30, 2000 at Chicago, Illinois.

/s/Harvey A. Roth

Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in the Employer's post-hearing brief have been carefully considered.
- 3/ The Employer is a corporation engaged in operating a plating and heat-treating facility in Addison, Illinois
- 4/ The petitioner seeks to represent a unit of all working foremen, heat treat operators, machine operators, fork lift operators, shipping and receiving, sanitation and labor employees employed by the Employer at its Addison, Illinois facility (the facility); but excluding clerical, supervisors, guards, truck drivers, salesmen and all others excluded by the Act. The parties are basically agreed to the scope and composition of the unit, however, contrary to the Petitioner, the Employer contends that the foremen in the heat treating department and the plating department working foremen (Jose Ramirez, Luis Chavez, Isidro Medina, Antonio Alvarez and Jaime Medina) are supervisors within the meaning of Section 2(11) of the Act and therefore should be excluded from the unit. At the hearing the Employer contended that two shipping and receiving employees were also supervisors. The Employer has since changed its position and in its post-hearing brief has agreed to include the two shipping and receiving employees in the unit. There are approximately fifty employees presently in the petitioned for unit.

The Employer is engaged in the production of screws and fasteners at its production facility in Addison, Illinois. The Employer's facility is owned by its two presidents, Patrick McCluskey and John Eva. Vice-president and General Manager, Robert Giomi directly oversees the plating, heat treating, and maintenance departments. There are approximately 65 employees. The plating department operates around the clock with three shifts with six to eight employees on each shift and a total of 23 employees, not counting the foremen. Each shift is headed by a foreman who reports directly to Robert Giomi. The foreman are supervisors within the meaning of Section 2(11) of the Act. Foreman hire, fire, discipline and direct the work of the workers they supervise. Decisions regarding the compensation of plating employees are made by Robert Giomi, VP and general manager in consultation with the owners, Eva and McCluskey. While the plating operation runs continuously, Giomi only works during the day shift. The production schedule is done by Michael Koch, the shipping and receiving manager.

There is one leadman also known as a working foreman on each shift. Jorge Ramirez is the working foreman on the first shift and Luis Chavez is the working foreman on the second shift. Currently, the positions of third shift foreman and working foreman are vacant and the Employer is in the process of filling them. The foremen are salaried employees while working foreman are hourly employees and are paid higher wages when they are filling in for the foreman. According to the testimony of Robert Giomi, working foremen step in to fill the gap when the foremen are not present. A working foreman steps in when the foreman is on vacation, sick or using personal days and on weekends when the foremen are not working. Giomi holds regular quality control meetings with the foremen in the plating department. Giomi recalled that at least on one occasion a working foreman attended a quality control meeting in place of an absent foreman. Giomi testified that a working foreman has the same authority as the foreman when he is not present. In the absence of the foreman, an employee calling in sick would call the

working foreman or Robert Giomi. Giomi could not recall any instance in which a working foreman disciplined, hired, fired, or transferred an employee in the plating department.

The foremen in the plating department write employee evaluations. Giomi could not recall any instance in which a working foreman wrote an employee evaluation. The working foremen receive written evaluations by the foreman. The foremen receive written evaluations from Giomi. In the plating department the working foremen wear a different colored shirt than that of the foreman or the rest of the employees. Jorge Ramirez and Luis Chavez are experienced platers and were both hired in the 80's and but for one employee have more experience than any other plating employee. On a day to day basis the working foremen balance the loading of the plating line in order not to overload auxiliary pieces of equipment. According to Giomi, Chavez and Ramirez's experience as platers was a factor in their being chosen as working foremen. The position of third shift foreman has been offered to both Chavez and Ramirez and is currently being shared by both employees.

The heat treating department is overseen by Michael Romano, who reports directly to Robert Giomi. All heat treating employees, including the foreman and manager wear the same uniform. The department runs on twelve hour shifts, twenty four hours a day, seven days a week. There are two shifts and they run from 5 a.m. to 5 p.m. and 5 p.m. to 5 a.m. There are four teams, two teams on each shift and they are designated by color. There is a foreman on each team; Jaime Medina, Antonio Alvarez, and Isidro Medina are the current foremen in the heat treating department. Each foreman has from two to four employees assigned to him. Currently, on the day time blue team there is no foreman and while the company searches for someone to fill the position, Michael Romano is acting as the dayshift blue team foreman. The teams work four days on, three days off, three days on, four days off. Romano usually work from 7 a.m. to 5 or 5:30 p.m. All teams have at least one day when Romano is not present at all, his phone number, beeper and cell phone number are posted throughout the heat treating department so he can be contacted if necessary. Romano testified that he is beeped at home several times a month depending on what the needs are.

Romano sets the production schedule most of the time. On weekends, the foremen may set the production schedule. Romano testified that he goes over the production schedule with the foreman, it is then given to the operator and it is the foreman's job to make sure it gets done. The department operates pursuant to a "QS9000" plan, meaning that all process parameters are written down as well as the directions as to how things are to be done. When Romano is not present the heat treat foreman are responsible for following the production guidelines and standards set out in the QS9000 plan. If any mechanical problems arise the foreman will try to deal with it to the extent possible or will call maintenance. Romano testified that the foremen oversee the operation of their shift and assign work to the employees on the shift, however, employees do a set job on a daily basis. Once a week, when maintenance is being done, the foreman moves employees around in order to get the necessary maintenance done. Aside from that time the employees do a set job on a daily basis.

Romano testified that the foreman can recommend disciplinary measures and have in fact recommended discipline on at least one occasion when a foreman filled out an absentee report on an hourly employee who had not come to work. Jaime Medina, Blue team, second shift foreman filled out an absentee report dated February 14, 1999. Romano stated that had it not been for that report he would not have known to discipline the employee, and he believes that such incidents happen at least a dozen times a year. Additionally, Romano testified that foremen have interviewed applicants for employment, and give prospective employees a tour of the plant and show them what their duties would entail if they came to work for the Employer in the heat treat department. Romano testified that foremen have made recommendations to hire employees based on these interviews.

As the heat treat department manager, Romano is a salaried employee. The foremen in the heat treating department are hourly employees. According to Romano, the heat treating foremen receive a higher rate than the other employees in the department; however, he did not know what the rate of pay for the foremen is or how it differs from that of the other employees. The foremen are the most senior of the employees in the heat treat department. Heat treating department employees punch a time card and are paid on a weekly basis. Time cards are approved by Romano. When an employee has forgotten his time card or is missing a punch, the foreman then manually fills out a card for the employee and then signs it. As hourly employees, the foremen also must punch in and out and their time cards are also reviewed by Romano.

Analysis

Section 2(11) of the National Labor Relations Act sets forth the test to determine supervisory status. It provides:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline employees or to recommend such action, if in connection with the foregoing, the exercise of such authority if not merely routine or clerical in nature, but requires the use of independent judgement.

It is well settled that in order to support a finding of supervisory status, it must be shown that the individual has the power to act on behalf of the employer with respect to other employees and exercises independent judgement in doing so. *International Center for Integrative Studies / The Door*, 297 NLRB 601 (1990).

Supervisory status may be found where an individual exercises discretion with regard to any of the elements outlined in Section 2(11) of the Act, however, the exercise of some supervisory authority “in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an employee.” *Bowne of Houston, Inc.* 280 NLRB 1222

(1986). The burden of proving that an individual is a statutory supervisor rests on the party alleging such status. *Ohio Masonic Home, Inc.*, 295 NLRB 390 (1989).

Applying these principles to the instant case, I find that the Employer has failed to demonstrate that the working foremen in the plating department are supervisors as defined in Section 2(11) of the Act. Contrary to the Employer's contention it is clear from the record that the working foremen do not have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employees or to effectively recommend such actions. Rather, the record showed that day to day decisions in these matters are made by the foreman. The working foremen's performance of supervisory functions in the absence of the foremen up to 10 percent of the time is not sufficient to constitute supervisory authority within the meaning of the Act. See *Hexacomb Corp.*, 313 NLRB 983, 984 (1994). Similarly, the additional compensation received by the working foremen for the time they spend performing supervisory functions does not, in the absence of any other indicia of supervisory authority, make them supervisors.

Conversely, the record supports the Employer's contention that the foremen in the heat treating department are supervisors within the meaning of Section 2(11) of the Act. For more than two-thirds of the time, the foremen are the highest authority in the heat treating department. There is no evidence that they need approval of their decisions from higher management, and their determinations result from the exercise of independent judgment. The record demonstrates that the foremen use that independent judgment to assign work on a regular basis. They also make recommendations to the human resources department on the hiring of applicants for employment, and there is no evidence that such recommendations have not been followed. Accordingly, I will exclude the foremen in the heat treating department from the unit found appropriate herein.

Finally, in its brief the Employer contends that the election in this case should be conducted with ballots printed in Spanish as well as English. It is well-settled that questions concerning the mechanics of an election are left to the discretion of the Regional Director. *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954). Thus, it is not necessary to rule on the Employer's contention.

In sum, I find that the appropriate unit should include the shipping and receiving employees, and the working foremen in the plating department, but should exclude foremen in the heat treating department. There are approximately 37 employees in the unit found appropriate herein.

177-8520-1600; 177-8520-4700; 177-8520-6200; 177-8520-9200; 177-8520-0800
370-4270

Voter Elig.-Statutry Exclsion-Sups, Guard
Procedural Issues

